

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 981 of 1985

Date of decision: 28-9-1998

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
NAZIMBHAI KASAMBHAI GHANCHI    MINOR THRO' KASAMBHAI DAUDBHAI

Versus

MAHEMOOD DAUDBHAI KHOJANI  
-----

Appearance:

MR PS CHAMPANERI for Petitioner  
None present for Respondent No. 1  
MR YN RAVANI for Respondent No. 2  
-----

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 28/09/98

ORAL JUDGEMENT

This appeal by the original claimant is directed against the award of the Motor Accident Claims Tribunal (Main) Surendranagar, passed in M.A.C.Petition No.64 of 1983 decided on 19th November, 1984 to the extent the full claim of the claimant has not been granted. The appellant- claimant sustained injuries in a motor vehicular accident occurred on 19th November, 1982. He was minor aged 14 years on the date of accident. He claimed Rs.30,000/- by way of compensation, against which the Tribunal has awarded Rs.8,600/- under different heads as under:

Rs.4,000/- for pain, shock and suffering.

Rs.1,000/- expenses for medicine, transport, etc.,

Rs.3,600/- future loss of income.

-----

Rs.8,600/- total

-----

2. Learned counsel for the appellant contended that the Tribunal has awarded less amount of compensation under the head pain, shock and suffering. It has come on record of the case that the appellant- claimant not only sustained fracture, but the plaster which was applied on his right leg was removed after a period of twelve months. This factual averment made by the learned counsel for the appellant has not been controverted by the learned counsel for respondent No.2. The pain, shock and suffering of the appellant- claimant, in the given facts, are certainly not taken in the correct perspective and it resulted in granting lesser amount of compensation. Taking into consideration the fact that the right leg of the appellant- claimant remained in plaster for 12 months, this amount of Rs.4,000/- awarded as compensation for pain, shock and suffering is certainly towards lower side. In such matters it is too difficult to find out the figure which can be considered just, adequate and reasonable compensation by applying scientific or mathematical formula. By awarding compensation under the Act some time the court has to do guess work; and some times the amount awarded as compensation may be little towards higher side. But taking into consideration the facts of the case, the amount of Rs.4,000/- awarded cannot be said to be just, adequate and reasonable sum of compensation under the Act. Under this head I consider that the interest of

justice will be met in case Rs.6,000/- is awarded as compensation. Thus the claimant- appellant will get Rs.2,000/- as additional compensation under this head.

3. While determining the compensation to be awarded under the head of future loss of income, the Tribunal has taken the monthly future income of the appellant to be Rs.400/-. On the date of the accident, i.e. 19-11-1982, the appellant was 14 years old. After attaining majority he should have started to earn and his prospective future income or notional income should have been taken into consideration for the purpose of arriving at a just, adequate and reasonable figure of his monthly income for the purpose of determining the future economic loss as a result of the injury sustained by him in the accident. Rs.400/- per month taken as the income seems to be towards lower side. At that time also the minimum wages for unskilled labour could not have been less than Rs.20/per day; or in the year in which he would have attained majority, the minimum wages of unskilled labour could not have been less than Rs.20 per day. So the monthly notional income of the appellant- claimant would have been Rs.600/-, and yearly it would have been Rs.7200/-. As a result of the injury, the appellant sustained partial permanent impairment to the extent of 5% of the body as a whole. The earning capacity of the appellant claimant will be reduced to the extent of Rs.360/- per year on account of 5% permanent partial disablement. The Tribunal has applied multiplier of 15 in this case and that appears to be reasonable. So the total future loss of income of the appellant -claimant should have been Rs. 5700/- per year. Under this head the Tribunal has awarded Rs.3,600/- as compensation. Thus the appellant-claimant will get Rs.2,100/as additional compensation under the head.

4. In the result this appeal is partly allowed and it is hereby ordered that in addition to the amount of compensation awarded by the Tribunal, the appellant-claimant shall be paid additional compensation of Rs.4,100/-. The claimant shall be entitled to interest on this additional amount of compensation at the rate of 6% per annum from the date of application till the date of realisation. The respondents shall be jointly and severally liable to pay this amount to the appellant-claimant.

...

